IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DELMARVA POWER & LIGHT CO. D/B/A CONECTIV POWER DELIVERY, Plaintiff below-appellee, v. MARVIN L. WYNN, Defendant below Cross plaintiff, appellant, v. TINA WYNN, Cross defendant below, Appellee.	)	Civil Action No. 06-02-246 Non-Jury Non-Arbitration

Submitted: July 21, 2006
Decided: July 26, 2006

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ORDER

This matter is here on appeal pursuant to 10 *Del. C.* § 9571 from a Justice of the Peace Court judgment entered on August 15, 2005 and subsequently modified on February 7, 2006. The appeal was docketed in this Court on February 17, 2006.

In the Justice of the Peace Court action, Delmarva Power and Light Company D/B/A Conectiv Power Delivery (hereinafter "Delmarva") on April 13, 2005 sued Marvin L. Wynn (hereinafter "Marvin") for non-payment of electrical services, supplied to 207 N. Jackson Street, Wilmington, Delaware 19805 where Marvin was the account holder, but Tina Wynn resided with a disabled child. Marvin on May 25, 2005 brought a cross-complaint against Tina Wynn (hereinafter "Tina") his ex-spouse. On August 15, 2005, judgment by stipulation was entered against Marvin for $15,000.00 cost and post-judgment interest at 9.50%. A stipulation of liability on Marvin's cross-complaint was entered against Tina in the amount of $15,000.00, cost and post-judgment at the legal rate.

The August 15, 2005 judgment was modified on February 6, 2006 by vacating liability against Tina and dismissing Marvin's claim without prejudice. The Justice of the Peace Court docket record indicates the modification was entered by argument. However, the parties on appeal dispute that a hearing was held prior to the modification.

Delmarva argues that it had a paralegal contact the Court for a copy of the August 15, 2005 order and was sent the modification without it requesting or appearing at a subsequent proceeding. Marvin argues that it is his recollection that the Justice of Peace Court reserved decision at the August 15, 2005 hearing pending receipt of the stipulation to be drafted by Delmarva. Marvin argues that such stipulation was never submitted and

no final order was issued by the Court until February 7, 2006. Marvin therefore concludes that the only final order of the Justice of the Peace Court is that of February 7, 2006 when the Court issued the formal modified judgment.

Delmarva moves to dismiss this appeal on the basis that it is time barred for failing to meet the fifteen (15) day rule. It is Delmarva's position that the August 15, 2005 date is not subject to review. Therefore, if the Court has jurisdiction, it only involves review of the modified order entered on February 7, 2006. Marvin argues that the only judgment entered in this matter was on February 7, 2006, since the Court reserved decision after the August 15, 2005 proceeding.

Additionally, Marvin moves to dismiss Delmarva's complaint for violation of the mirror-image rule. Marvin argues the complaint filed by Delmarva on appeal includes claims of breach of contract, quantum meruit, quantum valebant, book account, and unjust enrichment, and seeks damages in the amount of $25,904.35. Thus, Marvin maintains that since the complaint in the Justice of the Peace Court was for a debt claim and sought $15,000.00, Delmarva may not, consistent with the mirror-image rule, expand its claims and the amount of relief sought on appeal.

Tina has not participated in these proceedings even though she was named as a cross-defendant by Marvin in the notice of appeal.

The provisions of 10 *Del. C.* § 9571(c) provide that any appeal from a final order in a civil proceeding in the Justice of the Peace Court must be taken within fifteen (15) days of the final order, ruling, or decision of judgment. The docket provided to this Court indicates an order was entered by stipulation of liability of Marvin to Delmarva and Tina to Marvin on August 15, 2005. There are additional entries noting that on August

11, 2005, Tina signed a stipulation of liability with Marvin's attorney. Therefore, using the last entry date of August 15, 2005 any appeal from this judgment was required to be filed no later than August 30, 2005.

While Marvin argues that the Justice of the Peace Court reserved judgment at the August 15, 2006 hearing, neither the docket nor any record from the Justice of the Peace Court supports such position. Marvin does not provide any documentation for his position, but his counsel argues it is her recollection of the events. Moreover, the Court cannot rely on a party's memory that is not supported by the docket. Acceptance of unsupported recollections makes the court record open to continual reinterpretation and creates uncertainty where there should be finality in the record. The Court must rely on documents within the record. There is no evidence concerning a reserved judgment in the docket or court records. Therefore, the Court finds little merit to this position.

There are allegations that the judgment of February 7, 2006 was the result of argument before the order was revised. This Court conducted three hearings and received affidavits from the attorneys of record for Delmarva and Marvin. It appears that the efforts to achieve a resolution of this matter during the proceedings in the Justice of the Peace Court culminated in confusion in the record. However after the hearings, review of the documents, and consideration of the affidavits, I am satisfied that the February 7, 2006 order resulted from a request for the August 15, 2005 order.

Moreover, Justice of the Peace Court Civil Rule 58 provides that a judgment is effective when entered in the docket. The August 15, 2005 judgment was entered and thereafter effective. Justice of the Peace Civil Rule 59(c) provides that a motion to alter or amend the judgment shall be served and filed not later than ten (10) days after entry of

the judgment. The judgment was entered in the docket on August 15, 2005. Therefore, any motion to alter or amend was required to be filed no later than August 25, 2005, except under Civil Rule 60, where the Court can at any time on its own initiative or motion, correct any clerical mistake in re-judgment. But, here, there is no allegation that there was a mistake. Since the Court could not under its rules consider a motion to amend or alter the order on February 7, 2006, I find that such order could not be validly entered and is vacated.

Accordingly, the appeal of Marvin of February 6, 2006 is dismissed and the complaint of Delmarva is stricken. The Justice of the Peace Court Order of August 15, 2005 is affirmed.

SO ORDERED this 26th day of July, 2006

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Alex J. Smalls
Chief Judge

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